

SECTION 106

CONTROL OF MATERIALS

106.1-SOURCE OF SUPPLY AND QUALITY REQUIREMENTS:

The material used on the work shall meet all quality requirements of the Contract. To expedite the inspection and testing of materials, the Contractor shall notify the Engineer of their proposed sources of materials as required in 103.10. At the option of the Engineer, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the Contractor shall furnish materials from other sources at no increase in cost to the Division.

Quality Control by the Contractor: The Contractor shall provide and maintain a quality control system. This quality control system shall conform to all requirements of the Specifications.

106.1.1-Domestic Aluminum, Glass, Steel and Iron in Public Works Project:

106.1.1.1-Definitions: Unless the context in which used clearly requires a different meaning, as used in this section:

"Public Works" includes roads, highways, streets, bridges, sidewalks, sewage systems, buildings, engineering and architectural works, and any other structure, facility or improvement constructed or undertaken by the Division.

"Aluminum, glass, steel and iron products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated, or otherwise similarly processed from aluminum, glass, steel, and iron. "Domestic aluminum, glass, steel and iron products" means aluminum, glass, steel and iron products made in the United States.

Buy American requirements applies to coating. Coating is considered a manufacturing process and is interpreted to mean all processes that protect or enhance the value of a material or product to which it is applied such as epoxy coatings, galvanizing or painting.

106.1.1.2-Preference For Domestic Aluminum, Glass, Steel and Iron Products: The Division shall require that all aluminum, glass, steel or iron products to be supplied for this project shall be domestic aluminum, glass, steel or iron products in compliance with Chapter 5, Article 19 of the West Virginia Code, unless the offered or bid price of the domestic aluminum, glass, steel or iron products is unreasonable or that the domestic aluminum, glass, steel or iron products are not produced in sufficient quantities to meet the project requirements. The offered or bid price of domestic aluminum, glass, steel or iron products is not unreasonable unless it is more than 20 percent higher than the offered bid price of foreign made aluminum, glass, steel or iron products (including any applicable duty) or that if the aluminum, glass, steel, or iron

products to be supplied are produced in a "substantial labor surplus area" as determined by the United States Department of Labor, the offered or bid price of domestic aluminum, glass, steel or iron products is not unreasonable unless it is more than 30% higher than the offered or bid price of foreign-made aluminum, glass, steel or iron products (including any applicable duty). A listing of the "substantial labor surplus areas" can be obtained from the Division's Contract Section. This Section does not apply to any project in an amount less than \$50,000.00.

106.1.1.3-Contract Payments; Recovery in Case of Violation of Section:

The Division may not authorize or make any payments to a Contractor under a contract which contains or should contain the provision required by Section 106.1.1.2 unless such Contractor has fully complied with such Section. Prior to such payment, the Division will require the Contractor to furnish a certificate of compliance from each subcontractor and supplier. Payments made by the Division to any who did not comply with this section may be recovered by the Division.

106.1.1.4-Procedures For Use of Foreign-Made Materials: If foreign-made aluminum, glass, steel or iron products are supplied in compliance with this Section, the Contractor shall be responsible for providing procedures acceptable to the Division for determining that specification requirements are met, including all inspections at no additional cost to the Division. The use of foreign-made products will not be reason for granting an extension of time.

106.1.1.5-Use of Domestic and Foreign Steel: When steel or iron is used it shall be in compliance with Section 165 of the Surface Transportation Assistance Act of 1982, and the applicable provisions of Title 23CFR, Section 635.410, as amended, entitled "Buy American Requirements".

Pig Iron and processed, pelletized, and reduced iron ore manufactured outside of the United States may be used in the domestic manufacturing process for steel and/or iron materials used in Federal-aid highway construction projects.

When the Contractor desires to utilize foreign steel or iron for any of the applicable items contained in this project the Contractor shall comply with the provisions, in addition to all other provisions contained in the contract.

To be considered domestic in character, all manufacturing processes must occur in the United States of America. Coating is a manufacturing process.

The Contractor, if he desires to utilize foreign steel or iron, shall submit their bid for furnishing domestic steel iron on the normally prescribed bidding forms. In addition, the Contractor shall submit an alternate bid for furnishing foreign steel or iron on the "Form for Use of Foreign Materials" contained in Section F (1) of the Notice.

These provisions do not prevent the minimal use of foreign steel or iron provided the cost of materials (less installation) does not exceed one tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is

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greater.

In addition to the requirements of 103.2-Award of Contract, the award of the contract, if awarded, will be made to the bidder who submits the lowest total bid for the contract based on furnishing domestic steel or iron unless such bid exceeds the lowest total bid received for the contract based on furnishing foreign steel or iron by more than 25 percent, and further provided that the requirements of 106.1-Source of Supply and Quality Requirements, have been applied. The more stringent condition, either this section or of 106.1.1.2-Preference For Domestic Aluminum, Glass, Steel and Iron Products shall apply.

106.2-LOCAL MATERIAL SOURCES:

106.2.1-Designated Sources: Possible sources of local materials may be designated in the contract documents. The quality of material in such deposits will be acceptable in general, but the Contractor shall determine for themselves the amount of equipment and work required to produce a material meeting the Specifications. It shall be understood that it is not feasible to ascertain from samples the limits for an entire deposit, and that variations shall be considered as usual and are to be expected. The Engineer may order procurement of material from any portion of a deposit and may reject portions of the deposit as unacceptable.

The Division may acquire and make available to the Contractor the right to take materials from the sources designated in the contract documents together with the right to use such property as may be specified, for plant site, stockpiles, and haul roads.

106.2.2-Contractor Furnished Sources: If the Contractor desires to use materials from sources other than those designated, the Contractor shall acquire the necessary rights to take materials from the sources and shall pay all costs related thereto, including any which may result from an increase in length of haul. All costs of exploring and developing such other sources shall be borne by the Contractor. The use of material from other than designated sources will not be permitted until representative samples taken by the Engineer have been approved and written authority is issued for the use thereof.

When material deposits are not designated in the Contract, the Contractor shall provide sources of material acceptable to the Engineer.

When sources of material or material deposits are provided by the Division will assume the cost of processing samples to determine the suitability of the material unless otherwise specified.

Sites from which material has been removed shall, upon completion of the work, be left in a neat and presentable condition and shall be properly drained.

Unless otherwise directed by the Engineer, they shall be seeded and mulched as provided in 652 without additional compensation. Where practicable, borrow pits, gravel pits, and quarry sites shall be located so they will not be visible from the highway.

In accordance with the agreement between the Division of Highways and the

Division of Environmental Protection, the Contractor cannot furnish material from borrow areas outside the right of way for any other public or private use.

106.3-SAMPLES, TESTS, CITED SPECIFICATIONS:

All materials will be inspected, tested and approved prior to incorporation into the work. Any work which incorporates materials prior to the above evaluation shall be performed at the Contractor's risk, and may subsequently be considered as unacceptable. Unless otherwise specified, the materials shall meet the applicable Standard or Interim Specifications of the American Association of State Highway and Transportation Officials, the Standard or Tentative Specifications of the American Society for Testing and Materials, or Standards adopted by other specifying agencies, with preference given in the same order in which the above agencies are listed. The specification which is current at the time of advertisement for bids shall govern, except that, with the approval of the Engineer, subsequent revisions or adoptions may govern. All materials being used are subject to inspection, testing or rejection at any time prior to final acceptance of the completed work.

The Contractor shall be responsible for the quality of construction and materials incorporated. When called for in the Specifications, the Contractor shall perform all necessary process control inspection, sampling and testing.

All materials will be approved for acceptance through the Division's acceptance procedures. The Division has the exclusive right and responsibility for determining the acceptability of the construction and materials incorporated.

The Division may use the results of the Contractor's inspection, sampling and testing for acceptance purposes.

Lot or subplot sizes will normally be designated. In the event that operational conditions cause work to be interrupted, or only partially completed before the lot size designated has been achieved, the lot or subplot may be redefined by the Engineer as being either the amount of work accomplished within the day or that work partially completed combined with the next lot or subplot of work. It is the intent of these Specifications that the number of samples required to evaluate each lot or subplot will be unchanged even when the lot or subplot is redefined.

When an acceptance plan is cited, it shall be in accordance with [106.3.1](#).

106.3.1-Acceptance Plans:

106.3.1.1-Percent Within Tolerance: The percentage of each lot or subplot of material, product, item of construction, or completed construction within the specified tolerances will be determined by the procedures as referenced by the specification requirements. When West Virginia AP-A is referenced, it will consist of Tables 106-1 to 106-5 inclusive, published in MP 106.00.20.

106.3.1.2-Sampling of Reworked Lots or Sublots: It is the intent of these Specifications that lots or sublots of materials, products, items of construction or completed construction meet specification requirements at the time of

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submission. Lots or sublots generally will not be resampled unless reworked before submission. Sampling after reworking will be at the expense of the Contractor.

106.4-PLANT INSPECTION:

The Engineer may undertake the inspection of materials at the source.

In the event plant inspection is undertaken, the following conditions shall be met:

- i. The Engineer shall have the cooperation and assistance of the Contractor and the producer with whom the Contractor has contracted for materials.
- ii. The Engineer shall have full entry at all times to such parts of the plant as may concern the manufacture or production of the materials being furnished.
- iii. Adequate safety measures are to be provided and maintained.

The Division reserves the right to retest all materials, which have been tested and accepted at the source of supply, after the materials have been delivered to the project and prior to incorporation into the work and to reject all materials which, when retested, do not meet the requirements of these Specifications or those established for the specific project.

106.5-STORAGE OF MATERIALS:

Materials shall be so stored as to assure the preservation of their quality and fitness for the work. Stored materials, even though approved before storage, may again be inspected prior to their use in the work. Stored materials shall be located so as to facilitate their prompt inspection. Approved portions of the right-of-way may be used for storage purposes and for the placing of the Contractor's plant and equipment, but any additional space required therefore must be provided by them at their expense. Private property shall not be used for storage purposes without written permission of the owner or lessee, and if requested by the Engineer, copies of such written permission shall be furnished. All storage sites shall be restored to their original condition by the Contractor at their expense. This shall not apply to the stripping and storing of topsoil, or to other materials salvaged from the work.

Care shall be exercised to protect finished concrete surfaces from being stained from storing or placing materials, including but not limited to reinforcing bars or mesh or unpainted structural steel, on same. Any such material so stored shall be adequately protected from weather. Any stains resulting from storage of materials on finished concrete surfaces shall be removed by the Contractor at their expense.

Aggregate stockpiles may be made on ground that is denuded of vegetation, hard, and well drained. If necessary, the ground shall be covered with two inch (50 mm) plank. Different kinds and sizes of aggregates shall be kept separate during transportation, handling, and storage until batched. If necessary,

partitions of suitable height and strength shall be constructed between stockpiles to prevent different materials from becoming mixed. Care must be taken to prevent segregation of the coarse and fine particles of aggregates from taking place during handling or hauling. The inclusion of foreign materials will not be permitted. Aggregates placed directly on the ground shall not be removed from the stockpiles within one foot (300 mm) of the ground until the final cleaning up of the work, and then only the clean aggregate will be permitted to be used.

106.6-HANDLING MATERIALS:

All materials shall be handled in such manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work in tight vehicles, so constructed as to prevent loss or segregation of materials after loading and measuring, in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the work as loaded and the quantities as actually received at the place of operations.

106.7-UNACCEPTABLE MATERIALS:

106.7.1-Acceptance or Rejection: Following the application of the appropriate acceptance plan, the decision of the Engineer will be final as to the acceptance, rejection, or acceptance at an adjusted price of sampled lots or sublots.

106.7.2-Disposition of Lots or Sublots: Lots or sublots not conforming to specification requirements may be reworked or removed and replaced and resubmitted for acceptance. All nonconforming lots or sublots evaluated as unsatisfactory for the use intended shall be reworked or removed and replaced and resubmitted for acceptance. When the evaluation indicates the lots or sublots may satisfactorily remain in place, acceptance will be an adjusted price as stated in the Specifications or as directed by the Engineer.

106.8-DIVISION-FURNISHED MATERIAL:

The Contractor shall furnish all materials required to complete the work, except those specified to be furnished by the Division.

Materials furnished by the Division will be delivered or made available to the Contractor at the points specified in the Contract.

The cost of handling and placing all materials after they are furnished to the Contractor shall be considered as included in the contract price for the item in connection with which they are used.

The Contractor will be held responsible for all material delivered to them, and deductions will be made from any monies due the Contractor to make good any shortages and deficiencies, from any cause whatsoever, and for any damage which may occur after such delivery, and for any demurrage charges.

106.9-SILENCE OF SPECIFICATIONS:

The apparent silence of these Specifications, Supplemental Specifications, plans and Special Provisions as to any detail, or the apparent omission from them of a detailed description concerning any point shall be regarded as meaning that only material and workmanship of acceptable quality are to be used.

SECTION 107

LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

107.1-LAWS TO BE OBSERVED:

The Contractor shall keep fully informed of all Federal and State laws, all local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders and decrees; and shall protect and indemnify the State and its representatives against any claim or liability arising from or based on the violation of any such laws, ordinances, regulations, orders, or decrees, whether by themselves, their subcontractors or their employees.

107.2-PERMITS, LICENSES AND TAXES:

The Contractor shall procure all permits and licenses, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

107.3-PATENTED DEVICES, MATERIALS, AND PROCESSES:

If the Contractor employs any design, devise, material, or process covered by letters of patent or copyright, the Contractor shall provide for such use by suitable legal agreement with the patentee or owner. The Contractor and the surety shall indemnify and save harmless the Division, and affected third party, or political subdivision from and claims for infringement by reasons of the use of any such patented design, device, material or process, or any trademark or copyright, and shall indemnify the Division for any costs, expenses, and damages which it may be obligated to pay by reason of any infringement, at any time during the prosecution or after the completion of the work.

107.4-RESTORATION OF SURFACES OPENED BY PERMIT:

The right to construct or reconstruct any utility service in the highway or street or to grant permits for same, at any time, is expressly reserved by the Division for the proper authorities of the municipality in which the work is done, and the Contractor shall not be entitled to any damages either for the digging up of the street or for any delay occasioned.